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8 Attorneys for Plaintiffs

9 UNITED STATES DISTRICT COURT FOR THE  
10 CENTRAL DISTRICT OF THE STATE OF CALIFORNIA

11 PETER SILVA and JUDY  
12 MAGNUSON, and M.S., a minor by  
13 and through her Guardian ad Litem,  
14 PETER SILVA

15 Plaintiffs,

16 vs.

17 PALMDALE SCHOOL DISTRICT,  
18 a public entity; AMBER  
19 ALLINGTON, and DOES 1 through  
20 10, inclusive,

21 Defendants.

Case No.: LA CV17-03138 JAK  
(AGRx)

Judge: John Kronstadt

**STIPULATION AND  
PROTECTIVE ORDER**

22 Plaintiffs M.M.M.S. ("M.S."), a disabled child, her parents, PETER SILVA and  
23 JUDY MAGNUSON, and Defendants PALMDALE SCHOOL DISTRICT and AMBER  
24 ALLINGTON, by and through their respective counsel of record, to facilitate the  
25 exchange of information and documents that may be subject to confidentiality  
26 limitations on disclosure due to federal laws, state laws, and privacy rights, the Parties  
27 stipulate to and petition the Court to enter the following Stipulation and Protective  
28 Order.

1 The Parties agree that a protective order that meets the requirements of a  
2 “qualified protective order,” as that term is defined by 45 C.F.R. §164.512(e)(l)(v), may  
3 be required for certain information and documents and agree to comply with the privacy  
4 requirements imposed by the Health Insurance Portability and Accountability Act of  
5 1996 (45 C.F.R. Part 164), California Civil Code §§ 56 et seq., and the regulations  
6 promulgated under those laws. The Parties stipulate as follows:

7 1. In this Stipulation and Protective Order, the words set forth below have the  
8 following meanings:

9 a. “Proceeding” means this proceeding, *Silva et. al. vs. Palmdale Schl.*  
10 *Dist. et. al.*, Case No.: LA CV17-03138 JAK (AGRx).

11 b. “Confidential” means any information in the possession of a  
12 Designating Party who believes in good faith that the information is entitled to  
13 confidential treatment under applicable law.

14 c. “Confidential Materials” means any Documents, Testimony, or  
15 Information as defined below designated as “Confidential” under the provisions of this  
16 Stipulation and Protective Order.

17 d. “Designating Party” means the Party that designates Documents,  
18 Information, or Testimony as “Confidential.”

19 e. “Disclose” or “Disclosed” or “Disclosure” means to reveal, divulge,  
20 give, or make available materials, or any part of materials, or any information contained  
21 in materials.

22 f. “Documents” means (i) any “Writing,” “Original,” and “Duplicate”  
23 as those terms are defined by California Evidence Code Sections 250, 255, and 260, that  
24 have been produced in discovery in this Proceeding by any person, and (ii) any copies,  
25 reproductions, or summaries of all or any part of those items.

26 g. “Information” means the content of Documents or Testimony.

27 h. “Testimony” means all depositions, declarations, or other testimony  
28 taken or used in this Proceeding.

1           2.     The Designating Party has the right to designate as “Confidential” any  
2 Documents, Testimony, or Information that the Designating Party in good faith believes  
3 to contain non-public information that is entitled to confidential treatment under  
4 applicable law, including but not limited to Protected Health Information. The term  
5 “Protected Health Information” has the same scope and definition as set forth in the  
6 regulations issued by the United States Department of Health and Human Services  
7 pursuant to the Health Insurance Portability and Accountability Act of 1996  
8 (“HIPAA”), 42 U.S.C. § 1301, et seq., and includes, without limitation, all patient  
9 identifying information, patient medical information, and the other categories set forth  
10 in 45 C.F.R. § 164.514(b)(2)(ii).

11           3.     The entry of this Stipulation and Protective Order does not alter, waive,  
12 modify, or abridge any right, privilege, or protection otherwise available to any Party  
13 with respect to the discovery of matters, including but not limited to any Party’s right to  
14 assert the attorney-client privilege, the attorney work product doctrine, or other  
15 privileges, or any Party’s right to contest any such assertion.

16           4.     Any Documents, Testimony, or Information to be designated as  
17 “Confidential” must be clearly so designated before the Document, Testimony, or  
18 Information is Disclosed or produced unless otherwise stipulated. The parties may agree  
19 that the case name and number are to be part of the “Confidential” designation. The  
20 “Confidential” designation should not obscure or interfere with the legibility of the  
21 designated Information.

22           a.     For Documents (apart from transcripts of depositions or other pretrial or  
23 trial proceedings), the Designating Party must affix the legend “Confidential” on each  
24 page of any Document containing designated Confidential Material.

25           b.     For Testimony given in depositions the Designating Party may either:  
26           i.     identify on the record, before the close of the deposition, all “Confidential”  
27 Testimony, by specifying all portions of the Testimony that qualify as “Confidential;”  
28 or

1           ii.     within 30 days following receipt of the deposition transcript, designate all  
2 or portions of the Testimony as containing Confidential Information by notifying the  
3 other party in writing of the specific pages and lines of the transcript containing  
4 Confidential Information. All depositions, regardless whether a designation of  
5 confidentiality was made on the record, will be treated as containing Confidential  
6 Information and subject to this Protective Order until (30) days after a transcript of the  
7 deposition is received. In circumstances where portions of the deposition Testimony are  
8 designated for protection, the transcript pages containing “Confidential” Information  
9 may be separately bound by the court reporter, who must affix to the top of each page  
10 the legend “Confidential,” as instructed by the Designating Party.

11           c.     For Information produced in some form other than Documents, and for any  
12 other tangible items, including, without limitation, compact discs or DVDs, the  
13 Designating Party must affix in a prominent place on the exterior of the container or  
14 containers in which the Information or item is stored the legend “Confidential.” If only  
15 portions of the Information or item warrant protection, the Designating Party, to the  
16 extent practicable, must identify the “Confidential” portions.

17           5.     The inadvertent production by any party of any Document, Testimony, or  
18 Information during discovery in this Proceeding without a “Confidential” designation  
19 will be without prejudice to any claim that the item is “Confidential” and the Party will  
20 not be held to have waived any rights by the inadvertent production. In the event that  
21 any Document, Testimony, or Information that is subject to a “Confidential”  
22 designation is inadvertently produced without the designation, the Party that  
23 inadvertently produced the document must give written notice of the inadvertent  
24 production within twenty (20) days of discovery of the inadvertent production, together  
25 with a further copy of the subject Document, Testimony, or Information designated as  
26 “Confidential” (the “Inadvertent Production Notice”). Upon receipt of the Inadvertent  
27 Production Notice, the Party that received the inadvertently produced Document,  
28 Testimony, or Information must promptly destroy the inadvertently produced

1 Document, Testimony, or Information and all copies of it, or, at the expense of the  
2 producing Party, return it together with all copies of the Document, Testimony, or  
3 Information to counsel for the producing Party and shall retain only the “Confidential”  
4 designated Materials. Should the receiving Party choose to destroy such inadvertently  
5 produced Document, Testimony, or Information, the receiving Party must notify the  
6 producing Party in writing of the destruction within ten (10) days of receipt of written  
7 notice of the inadvertent production.

8         6. In the event that counsel for a Party receiving Documents, Testimony, or  
9 Information in discovery designated as “Confidential” objects to the designation with  
10 respect to any or all of designated items, objecting counsel will advise counsel for the  
11 Designating Party, in writing, of the objections, the specific Documents, Testimony, or  
12 Information to which each objection pertains, and the specific reasons and support for  
13 the objections (the “Designation Objections”). Counsel for the Designating Party will  
14 have thirty (30) days from receipt of the written Designation Objections to either (a)  
15 agree in writing to de-designate the Documents, Testimony, or Information and/or (b)  
16 file a motion with the Judge seeking to uphold any or all designations on Documents,  
17 Testimony, or Information addressed by the Designation Objections (the “Designation  
18 Motion”). Pending a resolution of the Designation Motion by the Judge, any and all  
19 existing designations on the Documents, Testimony, or Information at issue in the  
20 Designation Motion will remain in place. The Designating Party has the burden on any  
21 Designation Motion of establishing the applicability of its “Confidential” designation.  
22 In the event that the Designation Objections are neither timely agreed to nor timely  
23 addressed in the Designation Motion, then the Documents, Testimony, or Information  
24 will be de-designated in accordance with the Designation Objection applicable to the  
25 material.

26         7. Access to and/or Disclosure of Confidential Materials designated as  
27 “Confidential” will be permitted only to the following persons:

28         a. the Magistrate Judge and Judge assigned to the proceeding;

1           b.     (1) Attorneys of record in the Proceedings and their affiliated attorneys,  
2     paralegals, clerical and secretarial staff employed by the attorneys who are actively  
3     involved in the Proceedings and are not employees of any Party. (2) In-house counsel to  
4     the undersigned Parties and the paralegal, clerical, and secretarial staff employed by the  
5     counsel. Provided, however, that each non-lawyer given access to Confidential  
6     Materials will be advised that the Materials are being Disclosed under, and are subject  
7     to, the terms of this Stipulation and Protective Order and that they may not be Disclosed  
8     in violation of its terms;

9           c.     those officers, directors, employees, and affiliates, including e-discovery  
10    vendors, of all non-designating Parties that counsel for the Parties deems necessary to  
11    aid counsel in the prosecution and defense of this Proceeding; provided, however, that  
12    before the Disclosure of Confidential Materials to any officer, director, employee, or  
13    affiliate, counsel for the Party making the Disclosure will deliver a copy of this  
14    Stipulation and Protective Order to the person, explain that such person is bound to  
15    follow the terms of the Order, and secure the signature of the person on a statement in  
16    the form attached as Exhibit A;

17          d.     court reporters in this Proceeding (whether at depositions, hearings, or any  
18    other proceeding);

19          e.     any deposition, trial, or hearing witness in the Proceeding who previously  
20    has had access to the Confidential Materials, or who is currently or was previously an  
21    officer, director, partner, member, employee, or agent of an entity that has had access to  
22    the Confidential Materials;

23          f.     outside experts or expert consultants consulted by the undersigned Parties  
24    or their counsel in connection with the Proceeding, whether or not retained to testify at  
25    any oral hearing; provided, however, that before the Disclosure of Confidential  
26    Materials to any expert or expert consultant, counsel for the Party making the  
27    Disclosure must deliver a copy of this Stipulation and Protective Order to the person,  
28    explain its terms to the person, and secure the signature of the person on a statement in

1 the form attached as Exhibit A. It will be the obligation of counsel, upon learning of any  
2 breach or threatened breach of this Stipulation and Protective Order by any expert or  
3 expert consultant, to promptly notify counsel for the Designating Party of the breach or  
4 threatened breach; and

5 g. any other person that the Designating Party agrees to in writing.

6 8. Confidential Materials may be used by the persons receiving them only for  
7 the purposes of preparing for, conducting, participating in the conduct of, and/or  
8 prosecuting and/or defending the Proceeding, and not for any business or other purpose  
9 whatsoever.

10 9. Any Party to the Proceeding (or other person subject to the terms of this  
11 Stipulation and Protective Order) may ask the Court, after appropriate notice to the  
12 other Parties to the Proceeding, to modify or grant relief from any provision of this  
13 Stipulation and Protective Order.

14 10. Entering into, agreeing to, and/or complying with the terms of this  
15 Stipulation and Protective Order will not:

16 a. operate as an admission by any person that any particular Document,  
17 Testimony, or Information marked "Confidential" contains or reflects trade secrets,  
18 proprietary, confidential or competitively sensitive business, commercial, financial,  
19 personal or Protected Health information; or

20 b. prejudice in any way the right of any Party (or any other person subject to  
21 the terms of this Stipulation and Protective Order):

22 i. to seek a determination by the Court of whether any particular Confidential  
23 Material should be subject to protection as "Confidential" under the terms of this  
24 Stipulation and Protective Order; or

25 ii. to seek relief from the Court on appropriate notice to all other Parties to the  
26 Proceeding from any provision(s) of this Stipulation and Protective Order, either  
27 generally or as to any particular Document, Material or Information.

28 11. Any Party to the Proceeding who has not executed this Stipulation and

1 Protective Order as of the time it is presented to the Court for signature may thereafter  
2 become a Party to this Stipulation and Protective Order by its counsel's signing and  
3 dating a copy and filing it with the Court, and serving copies of the signed and dated  
4 copy upon the other Parties to this Stipulation and Protective Order.

5 12. Any Information that may be produced by a non-Party witness in discovery  
6 in the Proceeding in response to subpoena or otherwise may be designated by the non-  
7 Party as "Confidential" under the terms of this Stipulation and Protective Order, and  
8 any designation by a non-Party will have the same force and effect, and create the same  
9 duties and obligations, as if made by one of the undersigned Parties. Any such  
10 designation will also function as a consent by the producing Party to the authority of the  
11 Arbitrator in the Proceeding to resolve and conclusively determine any motion or other  
12 application made by any person or Party with respect to the designation, or any other  
13 matter otherwise arising under this Stipulation and Protective Order.

14 13. If any person subject to this Stipulation and Protective Order who has  
15 custody of any Confidential Materials receives a subpoena or other process  
16 ("Subpoena") from any government or other person or entity demanding production of  
17 Confidential Materials, the recipient of the Subpoena will promptly (but not later than 5  
18 days before production is required) give notice of the Subpoena by electronic mail  
19 transmission, followed by either express mail or overnight delivery, to counsel of record  
20 for the Designating Party, and will furnish counsel with a copy of the Subpoena. Upon  
21 receipt of this notice, the Designating Party may, in its sole discretion and at its own  
22 cost, move to quash or limit the Subpoena, otherwise oppose production of the  
23 Confidential Materials, and/or seek to obtain confidential treatment of the Confidential  
24 Materials from the subpoenaing person or entity to the fullest extent available under  
25 law. The recipient of the Subpoena may not produce any Documents, Testimony, or  
26 Information in response to the Subpoena before the date specified for production on the  
27 Subpoena.

28 14. Nothing in this Stipulation and Protective Order may be construed to

1 preclude either Party from asserting in good faith that certain Confidential Materials  
2 require additional protection. The Parties will meet and confer to agree upon the terms  
3 of any additional protection.

4 15. If, after execution of this Stipulation and Protective Order, any  
5 Confidential Materials submitted by a Designating Party under the terms of this  
6 Stipulation and Protective Order is Disclosed by a non-Designating Party to any person  
7 other than in the manner authorized by this Stipulation and Protective Order, the non-  
8 Designating Party responsible for the Disclosure will bring all pertinent facts relating to  
9 the Disclosure of the Confidential Materials to the immediate attention of the  
10 Designating Party.

11 16. This Stipulation and Protective Order is entered into without prejudice to  
12 the right of any Party to knowingly waive the applicability of this Stipulation and  
13 Protective Order to any Confidential Materials designated by that Party. If the  
14 Designating Party uses Confidential Materials in a non-Confidential manner, then the  
15 Designating Party will advise that the designation no longer applies.

16 17. The Parties will meet and confer regarding the procedures for use of  
17 Confidential Materials at trial and will move the Court for entry of an appropriate order.

18 18. Nothing in this Stipulation and Protective Order affects the admissibility  
19 into evidence of Confidential Materials or abridges the rights of any person to seek  
20 appropriate action with respect to any ruling made by the Court concerning the issue of  
21 the status of Protected Material.

22 19. This Stipulation and Protective Order will continue to be binding after the  
23 conclusion of this Proceeding and all subsequent proceedings arising from this  
24 Proceeding, except that a Party may seek the written permission of the Designating  
25 Party or may move the Court for relief from the provisions of this Stipulation and  
26 Protective Order.

27 20. Upon written request made within thirty (30) days after the settlement or  
28 other termination of the Proceeding, the undersigned Parties will have thirty (30) days

1 to either (a) promptly return to counsel for each Designating Party all Confidential  
2 Materials and all copies of Confidential Materials (except that counsel for each Party  
3 may maintain in its files, in continuing compliance with the terms of this Stipulation  
4 and Protective Order, all work product, and one copy of each pleading filed with the  
5 Arbitrator), (b) agree with counsel for the Designating Party upon appropriate methods  
6 and certification of destruction or other disposition of the Confidential Materials, or (c)  
7 as to any Documents, Testimony, or other Information not addressed by subparagraphs  
8 (a) and (b), file a motion seeking an Arbitrator order regarding proper preservation of  
9 the Materials. To the extent permitted by law the Court will retain continuing  
10 jurisdiction to review and rule upon the motion referred to in subparagraph (c).

11         21. After this Stipulation and Protective Order has been signed by counsel for  
12 all Parties, it will be presented to the Court for entry. Counsel agree to be bound by the  
13 terms of this Stipulation and Protective Order with regard to any Confidential Materials  
14 that have been or will be produced before the Arbitrator signs this Stipulation and  
15 Protective Order.

16         22. The Parties and all signatories to the Certification attached as Exhibit A  
17 agree to be bound by this Stipulation and Protective Order pending its approval and  
18 entry by the Court. In the event that the Court modifies this Stipulation and Protective  
19 Order, or in the event that the Court enters a different Protective Order, the Parties agree  
20 to be bound by this Stipulation and Protective Order until the Court enters a different  
21 Order. It is the Parties' intent to be bound by the terms of this Stipulation and Protective  
22 Order pending its entry so as to allow for immediate production of Confidential  
23 Materials under these terms.

1 This Stipulation and Protective Order may be executed in counterparts. Scanned  
2 and faxed signatures have the same force and effect as originals.

3  
4 DATED: July 2, 2018

LAW OFFICES OF HIRJI & CHAU, LLP

//s// *Rosa K. Hirji*

6  
7 ROSA HIRJI, ESQ.  
Attorney for Plaintiffs

8  
9 I hereby attest that all other signatories listed, and on whose behalf the filing is  
10 submitted, concur in the filing's content and have authorized the filing. (L.R. 5-4.3.4 (a)  
(2))

11  
12 DATED: July 2, 2018

CARPENTER, ROTHANS & DUMONT

//s// *Katrina Valencia*

14  
15 KATRINA VALENCIA, ESQ.  
Attorney for Defendants

16  
17 **ORDER**

18  
19 **GOOD CAUSE APPEARING**, the Court approves and enters this Stipulation and  
20 Protective Order.

21 **IT IS SO ORDERED.**

22  
23 Dated: July 16, 2018

*Alicia G. Rosenberg*

24  
25 Hon. Alicia G. Rosenberg  
United States Magistrate Judge

**EXHIBIT A**

**CERTIFICATION RE CONFIDENTIAL DISCOVERY MATERIALS**

I acknowledge that I, \_\_\_\_\_ [NAME],  
\_\_\_\_\_  
[POSITION AND EMPLOYER], am about to receive  
Confidential Materials supplied in connection with the Proceeding, *Silva et. al. vs. Palmdale Schl. Dist.*  
*et. al.*, Case No.: LA CV17-03138 JAK (AGRx). I certify that I understand that the Confidential  
Materials are provided to me subject to the terms and restrictions of the Stipulation and Protective  
Order filed in this Proceeding. I have been given a copy of the Stipulation and Protective Order; I have  
read it, and I agree to be bound by its terms.

I understand that Confidential Materials, as defined in the Stipulation and Protective Order,  
including any notes or other records that may be made regarding any such materials, may not be  
Disclosed to anyone except as expressly permitted by the Stipulation and Protective Order. I will not  
copy or use, except solely for the purposes of this Proceeding, any Confidential Materials obtained  
under this Protective Order, except as provided in the Protective Order or otherwise ordered by the  
Court in the Proceeding.

I further understand that I am to retain all copies of all Confidential Materials provided to me in  
the Proceeding in a secure manner, and that all copies of the Materials are to remain in my personal  
custody until termination of my participation in this Proceeding, at which point the copies of such  
Materials will be returned to counsel who provided me with the Materials.

I declare under penalty of perjury, under the laws of the State of California, that these  
statements are true and correct. Executed this \_\_\_\_ day of \_\_\_\_, 2017, at \_\_\_\_\_.

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Telephone Number